IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8923 of 1999

Date of Decision: 17-6-2004

UNION OF INDIA

Versus

BJ PAREKH

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Petitioner M/S. M.R.Bhatt, Adv.

For the Respondent None present

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. This petition is directed against the Judgment dated January 6, 1999 of the Central Administrative Tribunal (CAT), Ahmedabad Bench, in Original Application No.181 of 1998. The respondent (B.J.Parekh) was Inspector, Department of Income Tax. He retired on January 31, 1997. He was informed by letter dated February 19, 1997, that he had been granted two advance increments in the cadre of Head Clerk on passing of departmental examination of Inspector in 1980. This mistake was detected while case of respondent was being finalized for

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Whether reporters of Local Papers may be allowed to see the Judgment?

assessment of pension. Through communication dated February 20, 1997, the respondent informed the petitioner that the amount of Rs.33,937/= be deducted from his gratuity. Accordingly, it was done. However, the respondent, through O.A.No.181 of 1998, challenged the action of petitioner of deducting the amount of two advance increments from his gratuity and prayed for for quashing of the same, and for refund thereof with 18 per cent interest.

Before the CAT, it was contended that since the respondent had not misrepresented, the amount deducted was not justified, therefore, direction for payment thereof issued.

#. Aggrieved by the impugned order, the Special Civil Application assails the decision of the CAT. There is no dispute that the respondent was not entitled to two increments given to him by the petitioner mistakenly. The dispute is whether the amounts of two increments received by the respondent could be recovered. On this question, the case of respondent is that these increments were granted by the petitioner without any misrepresentation on his part, having done so, no recovery be made from him. We are not satisfied with this submission. The fact remains that, the respondent is not entitled to two increments. Instead of perpetuating the mistake, it was rectified by petitioner by resorting to recovery. However, before doing so, it followed principles of natural justice by putting the respondent to notice by communication dated February 19, 1997. The respondent replied by communication dated February 20, 1997, permitting the petitioner to make deduction. The matter should have ended there. With this background, filing of application by respondent before the CAT was not justified. These submissions were advanced before the CAT, which did not answer them in the impugned judgment.

#. Consequently, we hold since the respondent was not entitled to amounts of two advance increments received by him, recovery thereof after notice to him was justified. Therefore, the petition is allowed, the order of CAT dated January 6, 1999 is set aside. Rule is made absolute.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)